IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 245 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEIR OF DECD. MOHMMADALI HASANALI JINIA

Versus

MOHAMMADBHAI FAKHRUDDIN RANGWALA

Appearance:

1. Civil Revision Application No. 245 of 2000

MR KV SHELAT for Petitioner No. 1-1/1

MR AJAY R MEHTA for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 07/04/2004

ORAL JUDGEMENT

The respondents herein are the original plaintiffs of Regular Civil Suit No.18/1993, which is pending before the learned Civil Judge (S.D.) at Dahod.

2) Since the plaint of the suit is not available with the Court, Mr.Shelat, learned advocate for the petitioner informed the Court that the said suit was filed for getting decree for possession only on the ground of nonuser. The said suit was originally filed against one Mohmmad Hasan Ali Jinia. Said Mohmmad Hasan Ali Jinia was occupying the suit premises as a tenant and was doing business in the suit premises. During the pendency of the said suit, said Mohmmad Hasan Ali Jinia-the original defendant died on 7-10-1998. Thereafter, the plaintiff submitted an application on 29-10-1999 requesting the Court to allow the son of the deceased to be brought on record of the said suit. It is averred in the said application that suit premises is let out for business purpose and heir of the deceased tenant was not doing business at the relevant time with the deceased but now he is doing the business in the suit premises and therefore, he is required to be joined in the suit. It is averred in the application that the son of the defendant, who was sought to be joined as a party in the said suit, is not entitled to inherit tenancy and therefore, he is not required to be joined in the suit as a legal heir of the deceased tenant under Order 22 of C.P.C., but since he is in possession of the suit premises, he is required to be joined as a party. It is submitted by Mr.Shelat that the original plaintiffs have not even prayed for setting aside the abatement and such application for bringing heirs on record is filed after a period of one year. Looking to the application, prima facie, it seems that the applicant has filed the said application in a casual manner because even date of death of deceased is not mentioned and once the original defendant died, heirs are required to be brought on record within the period of limitation with a prayer for setting aside abatement. On the contrary, the applicant has clearly stated in the application that the son of the deceased tenant is not an heir as per the provisions of the Rent Act. It is not even stated that the application is made under Order 22 of C.P.C. However, the learned trial Judge has allowed the said application and the son of the original defendant was allowed to be brought on record as per the provisions of Section 5 (11) (c) of the Rent Act. It is the aforesaid order, which is impugned before this Court at the instance of the original defendant in this revision under Section 115 of C.P.C.

3) Considering the nature of the order, it is clear that by the impugned order, son of the original defendant is allowed to be brought on record so that he can contest the suit. No doubt, the trial Court has observed in the

order that son of the original defendant is required to be impleaded as a party for defending the suit as per the provisions of Section 5 (11) (c). Ultimately, the trial Court will have to decide this question after the parties lead evidence and main issue of nonuser is also required to be decided, which is the original cause of action for filing the suit. Therefore, the suit is required to be decided on its own merits and both the sides are permitted to lead appropriate evidence in connection with the subject matter of the suit.

4) In view of the above observation, Mr.Shelat, learned advocate for the petitioner wants to withdraw this Civil Revision Application. Permission is granted. Accordingly, this Civil Revision Application is disposed of as withdrawn. Rule is discharged. Interim relief stands vacated forthwith.

5) Writ to be sent to the trial Court forthwith so that the trial Court can proceed with the suit.

(P.B.Majmudar,J.)
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